

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

**IN THE MATTER CONCERNING
JUDGE PAMELA L. ILES**

**DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT**

This disciplinary matter concerns Judge Pamela L. Iles, who was appointed to the Orange County Municipal Court, South Orange County Judicial District, in January 1983, and elevated to the Orange County Superior Court in August 1998, upon unification of the trial courts. Her current term began in January 2001. Judge Iles and her attorney, Edith R. Matthai, Esq., appeared before the commission on June 28, 2006, pursuant to rule 116 of the Rules of the Commission on Judicial Performance, to contest the imposition of a public admonishment. Having considered the written and oral objections and argument submitted by Judge Iles and her counsel, and good cause appearing, the Commission on Judicial Performance issues this public admonishment pursuant to article VI, section 18(d) of the California Constitution, based upon the following Statement of Facts and Reasons:

STATEMENT OF FACTS AND REASONS

On August 5, 2002, while presiding over *People v. Wagner* (No. 02SF0210FA), a domestic violence case, Judge Iles placed the defendant on probation. The conditions of probation included that the defendant pay certain fines and donate \$1,000 to a battered women's shelter called Laura's House, that he participate in a batterer's program, and that he contact the Health Care Agency by a certain date in order to be evaluated for a substance abuse program.

The terms of probation were modified several times, including (1) an extension of time until December 16, 2002, for the defendant to appear in court to present proof of enrollment in a substance abuse program, and (2) an extension of time until January 7,

2003, to provide a progress report on the batterer's program and proof that he paid the donation to Laura's House.

On December 16, 2002, Mr. Wagner failed to appear and provide proof of enrollment in a substance abuse program. Judge Iles ordered his probation revoked and a bench warrant issued for his arrest.

Two days later, on December 18, 2002, Mr. Wagner appeared voluntarily before Judge Iles, without counsel, to request a payment schedule for the money he owed. The bench warrant, issued two days earlier, was recalled when the defendant appeared. Mr. Wagner told Judge Iles that he could not enroll in the substance abuse program because he was taking prescription drugs for a medical condition. The judge ordered Mr. Wagner to appear on January 8, 2003, for further proceedings, including a hearing to consider a physician's report regarding his medical condition. She then sent the defendant to the office of her judicial assistant, Leslie Howard, to discuss payment of the funds he owed.

Mr. Wagner went to Ms. Howard's office and told her that he was unwilling to pay the donation to Laura's House. Ms. Howard left her office followed by Mr. Wagner, went to Judge Iles's courtroom, approached Judge Iles who was dealing with another case, slammed Mr. Wagner's case file down on the sidebar, and told the judge that Mr. Wagner was not cooperating with her and that she could not work with him. Judge Iles told Mr. Wagner that since he was not willing to cooperate with the assistant, he would be taken into custody, and she instructed her bailiff to do so.

Judge Iles's bailiff handcuffed Mr. Wagner and placed him in the in-custody box in the courtroom. Mr. Wagner repeatedly asked Judge Iles why he was being put in custody. Judge Iles told him that he was going into custody because he was not cooperating with Ms. Howard, but later told him he was in custody for a probation violation. Judge Iles then ordered her bailiff to "take him down," meaning that he was to be removed from her courtroom to a cell elsewhere. The bailiff did so. Judge Iles then appointed the Public Defender to represent Mr. Wagner and set the matter for an arraignment hearing – 29 days later – on January 16, 2003. No bail was set and Mr. Wagner remained in custody.

Mr. Wagner filed a petition for writ of habeas corpus. In a published opinion, the Court of Appeal granted the petition, finding that, while Mr. Wagner's disobedience of the order to appear on December 16, 2002, was a valid basis for his probation revocation, Judge Iles's placing Mr. Wagner in jail, denying him bail and scheduling a hearing nearly

one month later was a de facto revocation of Wagner's probation without affording him requisite due process. (*In re Wagner* (2004) 127 Cal.App.4th 138, 145-146 (*Wagner*).) As the appellate court noted, case law requires that, in connection with probation revocation, probationers be advised of their rights to a formal hearing, to be represented by counsel, to present evidence, to confront and cross-examine witnesses, and to disclosure of the evidence against them. (*Ibid.*, citing *Morrissey v. Brewer* (1972) 408 U.S. 471, 488-489 and *People v. Vickers* (1972) 8 Cal. 3d 451, 457-461 (*Vickers*).)

The factual underpinnings of the Court of Appeal decision are findings made by Judge Roger D. Randall following an evidentiary hearing he held, pursuant to an order of the appellate court, as noted by the court in its decision. (See *Wagner, supra*, 127 Cal.App.4th at p. 141.) According to the court, contrary to the foregoing due process requirements,

[A]ll [Judge Iles] did was tell [Mr. Wagner] he would be taken into custody because he was not willing to cooperate with the judicial assistant and, when he inquired why he was taken into custody, she merely replied that he was in violation of his probation. This did not satisfy [Judge Iles's] duty to afford due process to [Mr. Wagner].

(*Wagner, supra*, 127 Cal.App.4th at p. 146.)

In her written objections to the proposed public admonishment and at her appearance before the commission, Judge Iles asserted that she notified Mr. Wagner of the basis of his arrest through his public defender who was appointed after his probation was summarily revoked and after he was remanded into custody. However, she has never provided any evidence to the commission in support of this factual assertion, and it is not reflected in Judge Randall's findings. Furthermore, Mr. Wagner was already in custody before any such notice may have been given. A probationer is entitled to notice of the basis of a probation violation and an opportunity to respond at the initial hearing at which probation is summarily revoked. (*Vickers, supra*, 8 Cal.3d at pp. 456-457.)

Judge Iles also asserts that the commission should assess her conduct by the statutory standard set by Penal Code section 1203.2, subdivision (a). That code section authorizes a judge to summarily revoke probation upon the rearrest of the probationer where there is reason to believe that the person has violated any of the conditions of probation. However, the Supreme Court has made clear that section 1203.2 "provides for

some but not all of the minimum due process requirements necessary to conform such proceedings to the Fourteenth Amendment proscription.” (*Vickers, supra*, 8 Cal.3d at p. 458.) As stated by the Court of Appeal here, “[p]lacing [Mr. Wagner] in jail, denying him bail, and scheduling a hearing a month hence constituted a de facto revocation of his probation without satisfying any of the due process requirements demanded upon such revocation.” (*Wagner, supra*, 127 Cal.App.4th at p. 145.)

Finally, Judge Iles has asserted during the commission investigation and in connection with her objections to the proposed discipline that she has committed only legal error, for which the commission may not discipline her because of the Supreme Court decision in *Oberholzer v. Commission on Judicial Performance* (1999) 20 Cal.4th 371 (*Oberholzer*). In that case, the court held that the commission lacks authority to sanction a judge for “mere legal error.” (*Id.* at p. 398.) However, and as relevant here, the court was specific that, a judge who commits legal error that *additionally* reflects enumerated types of misconduct is subject to commission discipline. (*Ibid.*) When, as here, there is legal error *and* clear and convincing evidence of a “disregard for fundamental rights,” the commission may impose discipline. (*Ibid.*)

Judges are required to be solicitous of the rights of persons who come before the court. (See *Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 286.) Judge Iles is an experienced jurist. No reasonable or reasonably competent judge would assume or conclude that he or she could summarily incarcerate an unrepresented defendant, in the manner Judge Iles did here, without implicating fundamental rights. (Cf. *In the Matter Concerning Judge Stephen P. Gildner*, Decision and Order Imposing Public Admonishment (2005), p. 4 [no reasonable or reasonably competent judge would assume or conclude that he or she could issue warrants for defendants’ arrests for failure to appear, in the absence of any evidence the defendants had notice of hearing].) Judge Iles’s actions in remanding Mr. Wagner to custody without notice or the opportunity to respond to the charges clearly and convincingly reflects a disregard for his fundamental rights.

Judge Iles’s conduct also violates canon 2A, which requires judges to respect and comply with the law, and canon 3B(2), which requires judges to be faithful to the law and maintain professional competence in the law. At a minimum, Judge Iles committed improper action within the meaning of article VI, section 18, subdivision (d).

In determining that a public admonishment was appropriate, the commission noted that Judge Iles has been the subject of prior discipline.

In 1988, Judge Iles received an advisory letter for failing to strictly abide by statutory requirements in imposing sanctions on a litigant.

In 1997, Judge Iles received an advisory letter for her handling of a domestic violence case, which gave rise to the appearance of embroilment and abandonment of her role as a neutral judicial officer. Judge Iles told the defendant that his probation would be violated if the victim contacted him, denied bail pending appeal although the defendant was statutorily entitled to it, and participated in settling the record on appeal after having been disqualified.

In 2004, Judge Iles received a private admonishment for displaying embroilment and partiality in a criminal case, and for creating the appearance that she sought to use her judicial office to advance her personal interest in achieving a particular outcome. The judge personally contacted a prosecutor suggesting that he investigate an attorney for perjury, asked witnesses to prepare declarations for the district attorney's office, and repeatedly contacted prosecutors about their investigation while it was ongoing. In the private admonishment, the commission noted "with great concern that this is the third occasion on which the judge's inappropriate conduct has warranted commission action."

Commission members Mr. Marshall B. Grossman, Justice Judith D. McConnell, Ms. Patricia Miller, Mr. Jose Miramontes, Mrs. Penny Perez, and Mr. Lawrence Simi voted for a public admonishment. Commission members Mrs. Crystal Lui, Judge Risë Jones Pichon, and Ms. Barbara Schraeger voted for a private admonishment. Commission member Judge Frederick P. Horn was recused, and Commission member Mr. Michael A. Kahn did not participate.

Dated: August 16, 2006

/s/
Marshall B. Grossman
Chairperson